THE HON'BLE SRI JUSTICE D.S.R. VARMA
AND
THE HON'BLE SRI JUSTICE P. SWAROOP REDDY
TAKEN UP WRIT PETITION NO.11768 OF 2005

% 13-10-2006

B.Subbarayudu and another

..... Petitioners

Vs.

$ The General Manager, Sri Satyanarayana
Spinning Mills Ltd., Regd Office: Venkatarayapuram,
P.O.Box No.3, Tanuku, West Godavari District
and two others.

… Respondents

! Counsel for the Petitioners : ….

^ Counsel for Respondent No.1 : Sri Vedula Srininvas

^ Counsel for Respondent Nos.2 & 3 : Government Pleader for Industries
and Commerce

<Gist :

>Head Note :

? Citations
NIL

THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE P.SWAROOP REDDY

TAKEN UP WRIT PETITION No.11768 OF 2005

Dated:13.10.2006

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…Petitioner

The General Manager, Sri Satyanarayana
Spinning Mills Limited, Tanuku and two others.

…Respondents

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ORAL ORDER: **(per the Hon'ble Sri Justice D.S.R.Varma)**

Heard the learned counsel appearing for the respondent No.1, the learned Advocate General and the learned Government Pleader for Industries & Commerce Department, appearing for the respondent Nos.2 and 3.

2. This writ petition is taken up on the basis of a representation, dated 06.05.2006, addressed to the Hon'ble the Chief Justice, High Court of Andhra Pradesh, Hyderabad, by one B.Subbarayudu, S/o. Meeradasu and one V.Kanaka Raju, S/o. Butchaiah, Residents of Tanuku, West Godavari District, who are workers of Sri Satyanarayana Spinning Mills Limited, Tanuku.

3. The grievance ventilated in the said representation is that the Management of the first respondent has issued a show cause notice to them on 07.03.2005 as to why their names should not be removed from the service rolls of its Attendance Register, as they could not discharge their duties due to their suffering from AIDS; that the same amounts to inhuman treatment being meted out to them and that further, the Management of the first respondent has issued notice, dated 25.03.2005, to them stating that since the replies submitted by them to the earlier notice, dated 07.03.2005, was not satisfactory, they should submit their resignation within three days or else their names would be removed from the rolls of the Attendance Register of the Management.

4. Sri Vedula Srinivas, the learned counsel appearing for the first respondent, submits that the petitioners were sought to be terminated not on the ground that they have been suffering from AIDS but only on account of their continued absence from duties on the ground of ill health. He further submits that, in fact, the petitioners have submitted certificates issued by the Doctors of ESI Hospital for grant of leave, which would reveal that the petitioners have been suffering from HIV positive.

5. The alleged notice, dated 25.03.2005, issued by the first respondent, would reveal that the explanation offered by the petitioners to the earlier notice, dated 07.03.2005, was not satisfactory. It was stated in the said notice that in the certificates submitted by the petitioners, which were issued by the Doctors of ESI Hospital, it was categorically stated that the petitioners have been suffering from HIV positive and denial of this fact by the petitioners is not proper. Further, it could be seen from the said notice that the said disease was incurable and, therefore, there is no possibility for the petitioners to attend the duties and it is also not possible for the Management to continue them on the Muster Rolls of establishment. Eventually, resignation was sought from the petitioners within three days from the date of said notice and in the event of failure, it was indicated that their names would be

removed from the Muster Rolls of first respondent.

6. The said notice, dated 25.03.2005, in fact, is the source of provocation to the petitioners in making the representation to this Court.

7. It is represented by the learned counsel appearing for the Management of the first respondent that out of the two petitioners, the second petitioner by name V.Kanaka Raju, S/o. Butchaiah, has been attending the duties, of course, only for about three weeks a month and the first petitioner by name B.Subbarayudu has not been attending the duties at all.

8. On the above said submissions, initially, this Court, by order, dated 21.08.2006, directed the petitioners to subject themselves to medical test at the General Hospital, Kakinada, East Godavari District, within fifteen days from the date of intimation from the first respondent. The Superintendent of General Hospital, Kakinada, also was informed about the said order of this Court. The petitioners were also served with notice, as directed by this Court, through the first respondent. There is no dispute with regard to service of said notice on the petitioners and hence we deem that the notice was validly and sufficiently served on the petitioners and the consequences of said notice have been within the knowledge of the petitioners.

9. But, so far, there is no report whatsoever from the General Hospital, Kakinada. Therefore, we are forced to presume that the petitioners did not subject themselves to medical test at General Hospital, Kakinada. This Court, in fact, was inclined to know the gravity of ailment of the petitioners only in order to assess the extent of fitness of the petitioners to perform their duties.

10. It is to be further noted that if an employee is persistently irregular in attending the duties, necessary disciplinary action can be initiated against him and basing on the gravity of the irregularity, including the continued unauthorized

absence, services of the employee can be terminated, provided that the procedure contemplated under the Industrial Disputes Act is followed.

11. But, in the present case, new dimension relating to the sociological issue is involved. Therefore, it is our endeavor to look into such other aspects instead of strict application of the provisions of law.

12. It is common knowledge that the individuals who have been suffering from HIV positive shall be given confidence to lead their life devoid of any feel of diffidence in the society and the society, as a whole, is at an obligation to see that the persons who have been suffering from HIV positive shall not be attached with any social stigma on that score because they might have fallen prey to the said disease involuntarily, owing to the innate human weaknesses.

13. If, in strict sense, that ailment though, *prima facie,* could be seen as per the certificates issued by the Doctors of ESI Hospital, for the continuous absence, atleast one of the petitioners i.e., the first petitioner by name B.Subbarayudu may have to be disengaged from service. But, this Court is testing the petitioners from the standpoint of social malady instead of strict application of law.

14. In the above circumstances, we only direct that the second petitioner by name B.Kanaka Raju, who has been attending the duties, be continued in service of the first respondent and payment of salary be made to him subject to the service conditions.

15. However, insofar as the first petitioner by name B.Subbarayudu is concerned, we are of the view that since he neither subjected himself to the medical examination as suggested/directed by this Court at General Hospital, Kakinada, nor is attending the duties, the first respondent is at liberty to proceed against him in accordance with law, for his continuous absence, but not on the ground that he has been suffering from

HIV.

16. In other words, we are of the view that insofar as the first petitioner is concerned, he is neither assisting himself nor is in a position to assist this Court to grant any kind of relief to him, in any manner.

17. With the above observations and directions, the writ petition is closed, at the stage of admission. However, there shall be no order as to costs.

18. However, it is made clear that the relief that has been granted by this Court, insofar as the second petitioner is concerned, shall not be understood as a permanent feature. In other words, subject to the fitness and other exigencies, the Management of the first respondent shall be at liberty to proceed against him in accordance with law.

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D.S.R.VARMA, J

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P.SWAROOP REDDY, J

13TH OCTOBER 2006
L.R.Copy to be marked.
KRK/DR